

FILED
JUN 28 2006
CLERK
United States Bankruptcy Court
San Jose, California

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re]	Case No. 05-55655-ASW
JACQUELINE M. BARRANTES,]	Chapter 13
Debtor]	

MEMORANDUM DECISION ON CREDITOR'S
OBJECTION TO CONFIRMATION

Before the Court is the objection of Angelikka Carter ("Creditor") to confirmation of the chapter 13 plan of Jacqueline Barrantes ("Debtor"). Creditor's objection to confirmation is based on her assertion that Debtor has not pledged all of her disposable income in support of the plan.

Debtor is represented by James J. Gold, Esq., of Gold and Hammes. Creditor appears *in propria persona*.

This Memorandum Decision constitutes the Court's findings of fact and conclusions of law, pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

I.

STATEMENT OF FACTS

Debtor filed a voluntary petition under chapter 13 of the Bankruptcy Code on September 9, 2005 ("Petition"). Concurrently

1 with the filing of the petition, Debtor submitted a proposed
2 chapter 13 plan. Debtor subsequently filed an amended plan
3 ("Plan") on March 24, 2006.¹ The proposed Plan provides for
4 payment of zero cents on the dollar to general unsecured
5 creditors.² Creditor filed an "Objection to Confirmation of
6 Debtor's Plan" ("Objection") on October 21, 2005. Creditor
7 objected to the proposed Plan on the grounds that the Plan does not
8 account for all of Debtor's projected disposable income as required
9 by 11 U.S.C. § 1325(b)(1)(B). The evidentiary hearing on this
10 matter was conducted and completed on May 15, 2006. The only
11 witnesses to testify at the evidentiary hearing were Debtor and
12 Creditor.

13 In her objection, Creditor contended that: (1) Debtor
14 overstated her child care expenses; (2) Debtor overstated her
15 monthly mortgage payment; (3) Debtor understated her income; and
16 (4) Debtor overstated her transportation expenses or,
17 alternatively, those expenses are not reasonably necessary.

18 **A. Child Care Expenses**

19 Creditor asserted that Debtor overstated her monthly child care
20 expenses in calculating her chapter 13 Plan payments. At trial,
21 Debtor introduced into evidence Debtor's "Schedule J - Current
22 Expenditures of Individual Debtors" ("Schedule J") which was filed
23 in Debtor's bankruptcy case along with the Petition.³ Schedule J
24

25 ¹ The Plan was admitted into evidence as Exhibit A.

26 ² Though Debtor has twice amended her chapter 13 plan since
27 the original filing, the proposed payment on general unsecured
claims has remained unchanged.

28 ³ A copy of Schedule J was admitted into evidence as
Exhibit D.

1 lists Debtor's monthly household expenditures. The list includes
2 childcare expenses of \$1,075.00 per month.

3 According to Debtor's testimony, she is a single parent with
4 two children, both of whom have special needs. Debtor testified
5 that, although her child care costs vary from week to week, in a
6 typical week she spends over \$200.00 for the care of her son, and
7 \$50.00 to \$60.00 for the care of her daughter. When these typical
8 numbers are extrapolated to a monthly basis, Debtor's child care
9 costs exceed slightly the \$1,075.00 expense stated in Schedule J.⁴

10 Creditor did not offer any evidence to contradict Debtor's
11 testimony regarding her child care expenses. The Court accepts
12 Debtor's statement of monthly child care expenses in Schedule J of
13 \$1,075.00 as correct.

14 **B. Mortgage Payments**

15 The objection points out a discrepancy regarding the Debtor's
16 monthly mortgage payment as stated in Schedule J and in the Plan.
17 Schedule J states the mortgage payment as \$1,952.00. The Plan,
18 however, shows a monthly mortgage payment of \$1,652.00.

19 Debtor filed a "Declaration of Debtor" ("Debtor's Declaration")
20 on March 17, 2006. Debtor's Declaration states that her monthly
21 mortgage payment is \$1,651.64, plus a late charge of \$64.48 which,
22 according to Debtor, must be paid routinely because the timing of
23 her payday does not allow her to make the mortgage payment on
24 time.⁵ Debtor's Declaration also states that Debtor must pay
25

26 ⁴ Weekly expenses of \$250.00 (the low end of the range
27 provided by debtor) multiplied by an average of 4.33 weeks per
month yields expenses of \$1,082.50 per month.

28 ⁵ Debtor's Declaration was admitted into evidence as
Exhibit B.

1 monthly homeowner's association dues of \$280.00.⁶ The sum of these
2 expenses is \$1,996.12. Accordingly, Debtor asserted that the
3 amount shown on Schedule J is actually understated.

4 Creditor did not present any additional evidence or argue this
5 point at the hearing. Based on the available evidence, the Court
6 accepts Debtor's statement of her monthly mortgage payments as
7 provided on Schedule J and finds that the amount was not
8 overstated.

9 **C. Income**

10 Creditor contended that Debtor understated her income for
11 purposes of calculating monthly Plan payments. Debtor's Declaration
12 states that the Debtor is employed as a special education teacher
13 by the San Jose Unified School District. Debtor introduced into
14 evidence Debtor's "Schedule I - Current Income of Individual
15 Debtors" ("Schedule I") which was filed concurrently with the
16 Petition. Schedule I states that Debtor's gross monthly income is
17 \$5,400.00, which, after subtracting payroll deductions, yields net
18 income of \$4,500.00.⁷ According to Schedule J, Debtor's total
19 monthly expenses are \$3,900.00. Simply subtracting Debtor's net
20 income from her monthly expenses yields \$600.00 of disposable
21 income. Debtor's proposed monthly Plan payments vary, but the
22
23

24 ⁶ The Plan also shows monthly homeowner's association dues
25 payments of \$280.00.

26 ⁷ Schedule I states Debtor's "Gross Employment Income" as
27 \$5,400.00, less "Payroll Deductions" totaling \$900.00 (comprised of
28 \$825.00 in payroll taxes and social security and \$75.00 in union
dues) equals "Net Monthly Employment Income" of \$4,500. Exhibit C
does not list any other sources of income for Debtor. Thus, the
\$4,500 figure is also referred to as "Total Monthly Income" and
"Grand Total Monthly Income".

1 average is approximately \$591.07.⁸ Debtor has also established, as
2 set forth above, that both her monthly child care expenses and
3 monthly mortgage payments are somewhat understated. Accordingly,
4 the Court is satisfied that all of Debtor's disposable income is
5 being pledged toward the Plan.

6 Creditor also took issue with Debtor's statement of her gross
7 monthly income. Creditor argued that Debtor's gross monthly income
8 is \$5,863.00 rather than \$5,400.00. In support of this contention,
9 Creditor referred to a document entitled "Employer's Return (Wage
10 Garnishment)" ("Wage Garnishment").⁹ The Wage Garnishment is dated
11 August 11, 2005. According to the "Declaration of the Creditor"
12 ("Creditor's Declaration") filed April 6, 2006¹⁰, Creditor obtained
13 a small claims court judgment against Debtor relating to unpaid
14 childcare services. The Wage Garnishment was served on Debtor's
15 employer in an effort to garnish Debtor's wages to fulfill the
16 judgment. The Wage Garnishment was completed by the payroll office
17 of Debtor's employer, San Jose Unified School District, and
18 returned to the Sheriff's Department, which subsequently mailed it
19 to Creditor. It states that, in the last pay period prior to
20 completion of the Wage Garnishment, Debtor had monthly gross
21 earnings of \$5,863.00. Creditor cited the Wage Garnishment as
22

23 ⁸ The Plan calls for payment of \$400.00 per month for 6
24 months, \$500.00 per month for 12 months, and \$650.00 per month
25 thereafter, until the Plan ends. The total term of the Plan is 56
26 months. The average is calculated as follows: $((\$400.00 * 6) +$
 $(\$500.00 * 12) + (\$650.00 * 38) / 56 = \$591.07$).

27 ⁹ The Wage Garnishment was admitted into evidence as
28 Exhibit 2.

¹⁰ Creditor's Declaration was admitted into evidence as
Exhibit 1.

1 evidence that Debtor understated her income.

2 Debtor explained that the discrepancy between the \$5,400.00
3 figure for gross monthly income stated on Schedule I and the
4 \$5,863.00 figure on the Wage Garnishment was due to the fact that
5 the higher figure reflected income she received from teaching
6 summer school in 2005. Debtor's Declaration explains that she will
7 not be teaching summer school in 2006, 2007 or 2008.¹¹ As a result,
8 she will not receive any additional wages related to teaching
9 summer school in the next three years. Thus, according to Debtor,
10 her gross monthly income is correctly stated on Schedule I as
11 \$5,400.00.

12 The Court accepts Debtor's explanation for the discrepancy
13 regarding her income. The only evidence that Creditor offered
14 suggesting that Debtor understated her income was the Wage
15 Garnishment. Debtor persuaded the Court the \$5,863.00 figure,
16 which appears on the Wage Garnishment is not indicative of Debtor's
17 current gross monthly income. Therefore, the Court finds that
18 Debtor's proposed Plan payments were correctly calculated using the
19 \$5,400.00 figure.

20 **D. Vehicle**

21 During the evidentiary hearing, Creditor argued that Debtor's
22 vehicle is unreasonably expensive to operate and maintain and that
23 Debtor is overstating her transportation expenses. Debtor owns a
24

25 ¹¹ Debtor's Declaration explains the reasons why Debtor will
26 not be teaching summer school until, at the earliest, 2009. Due to
27 funding shortfalls, San Jose Unified School District will not be
28 offering elementary summer school in either 2006 or 2007. In
addition, the district implemented new rules governing the
selection of teachers for summer school assignments that precludes
Debtor from receiving an assignment for 2008, should the district
choose to offer elementary summer school in that year.

1 2000 Chevrolet Suburban ("Suburban"). Schedule J states Debtor's
2 monthly transportation expenses (except car payments) as \$100.00
3 and automobile insurance expenses as \$145.00. No amount is listed
4 for car payments. In her testimony, Debtor explained that she used
5 funds received from her father to purchase the Suburban just prior
6 to filing the Petition. Creditor did not offer any evidence
7 suggesting that Debtor's expenses related to the Suburban are
8 unreasonable or that the expenses are overstated. In fact, \$100.00
9 per month seems to understate the amount that Debtor must spend for
10 such a vehicle on fuel alone. Such a vehicle is well-suited to the
11 transportation needs of Debtor and her two children with special
12 needs. The Court is satisfied that Debtor's expenditures related
13 to her vehicle are both reasonable and properly stated.

14 II.

15 APPLICABLE LAW¹²

16 The relevant provision of the Bankruptcy Code states as
17 follows: "If the trustee or the holder of an allowed unsecured
18 claim objects to the confirmation of the plan, then the court may
19 not approve the plan unless, as of the effective date of the plan
20 the plan provides that all of the debtor's projected disposable
21 income to be received in the three year period beginning on the
22 date that the first payment is due under the plan will be applied
23 to make payments under the plan." 11 U.S.C. § 1325(b)(1)(B). The
24 term "disposable income" is defined as "income which is received by
25 the Debtor and which is not reasonably necessary to be expended for
26

27 ¹² This case was filed on September 9, 2005, prior to the
28 October 17, 2005 effective date of the amendments to the Bankruptcy
Code made by the Bankruptcy Abuse Prevention and Consumer
Protection Act of 2005 ("BAPCPA"). Accordingly, the BAPCPA
amendments do not apply.

1 the maintenance or support of the debtor or a dependent of the
2 debtor." 11 U.S.C. § 1325(b)(2)(A).

3 III.

4 ANALYSIS

5 The points raised by Creditor -- that Debtor understated her
6 income and overstated her expenses -- are relevant to whether the
7 proposed Plan provides that all of Debtor's projected disposable
8 income will be applied to make payments under the Plan. If
9 Debtor's expenses were, in fact, overstated, her disposable income
10 would also be higher than indicated, and a greater amount would
11 have to be applied to the Plan. Creditor's objection with respect
12 to the Suburban raises an issue as to whether Debtor's
13 transportation-related expenses are reasonably necessary for the
14 maintenance or support of the Debtor or her family. As discussed
15 above, the Court finds that Debtor accurately stated her income and
16 expenses on Schedules I and J, and these figures were used to
17 calculate Debtor's proposed monthly Plan payment. Based on the
18 evidence presented, the Court holds that the proposed Plan properly
19 applies all of Debtor's projected disposable income pursuant to the
20 requirements of § 1325(b)(1)(B).

21 To the extent that Creditor has raised an objection with regard
22 to the reasonable necessity of Debtor's transportation expenses,
23 the Court finds that the expenses stated in Schedule J are
24 completely reasonable for the maintenance and support of the Debtor
25 and her dependents. Debtor is a single parent with two dependent
26 children with significant special needs. The expenses claimed by
27 Debtor are in no way extravagant or luxurious. These expenses are
28 reasonably necessary under § 1325(b)(2)(A).

IV.

CONCLUSION

Debtor's Plan complies with the requirements of § 1325.
Creditor's objection to confirmation of the Plan is overruled.
Counsel for the Debtor shall serve upon Creditor and file with the
Court a proposed form of order.

Dated

June 28, 2006


ARTHUR S. WEISSBRODT
UNITED STATES BANKRUPTCY JUDGE

1 Court Service List

2 Norma L. Hammes, Esq.
3 Law Offices of Gold and Hammes
4 1570 The Alameda #223
5 San Jose, CA 95126

6 Jacqueline Marie Barrantes
7 1000 Weepinggate Ln
8 San Jose, CA 95136

9 Angelikka Carter
10 337 Avenida Nogales
11 San Jose, CA 95123

12 Devin Derham-Burk
13 P.O. Box 50013
14 San Jose, CA 95150-0013

15 Office of the U.S. Trustee
16 U.S. Federal Bldg.
17 280 S 1st St. #268
18 San Jose, CA 95113-3004

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34